

**Donald A. Vaughn, Esq. (Bar No. 110070)**  
**VAUGHN & VAUGHN**  
**501 West Broadway, Suite 750**  
**San Diego, CA 92101**  
**Tel: (619) 237-1717 / Fax: (619) 237-0447**  
**E-Mail: vandvlaw@pacbell.net**

Attorneys for Defendants VINCENT MANNO, Trustee Of The Vincent D. Manno Trust Agreement Dated April 23, 1991; CAROL ANN CARLETON, Trustee Of The Carol A. Carlton Trust Agreement Dated May 2, 1991; FILOMENA R. BUCKINGHAM, Trustee Of The Filomena R. Buckingham Trust Agreement Dated MAY 2, 1991; AMELIA M. LUCAS, Trustee Of The Filomena R. Buckingham Trust Agreement Dated May 2, 1991; FILOMENA R. BUCKINGHAM, Trustee Of The Amelia M. Lucas Trust Agreement Dated May 2, 1991; AMELIA M. LUCAS, Trustee Of The Amelia M. Lucas Trust Agreement Dated May 2, 1991; LARRY M. LUCAS, Trustee Of The Lucas Family Trust U/D/T Dated January 22, 1991; and AMELIA M. LUCAS, Trustee Of The Lucas Family Trust U/D/T Dated January 11, 1991

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CHRIS KOHLER.

Plaintiff.

V.

STONECREST GAS & WASH, INC., dba STONECREST SHELL; STONECREST PLAZA, LLC; BARRY JAY STONE; STONECREST SQUARE AUTO CENTER, LLC; VINCENT MANNO, TRUSTEE OF THE VINCENT D. MANNO TRUST AGREEMENT DATED APRIL 23, 1991; CAROL ANN CARLETON, TRUSTEE OF THE CAROL A. CARLTON TRUST AGREEMENT DATED MAY 2, 1991; FILOMENA R. BUCKINGHAM, TRUSTEE OF THE FILOMENA R. BUCKINGHAM TRUST AGREEMENT DATED MAY 2, 1991; AMELIA M. LUCAS, TRUSTEE OF THE FILOMENA R. BUCKINGHAM TRUST AGREEMENT DATED MAY 2, 1991; FILOMENA R. BUCKINGHAM, TRUSTEE OF THE AMELIA M. LUCAS TRUST AGREEMENT DATED MAY 2, 1991; AMELIA M. LUCAS, TRUSTEE OF THE AMELIA M. LUCAS TRUST AGREEMENT DATED MAY 2, 1991; LARRY M. LUCAS, TRUSTEE OF THE LUCAS FAMILY TRUST U/D/T DATED JANUARY 22, 1991; and AMELIA M. LUCAS, TRUSTEE OF THE LUCAS FAMILY TRUST U/D/T DATED JANUARY 11, 1991.

### Defendants.

Case No. 08CV0105L(NLS)

## **ANSWER TO COMPLAINT**

1 COME NOW Defendants VINCENT MANNO, Trustee Of The Vincent D. Manno  
2 Trust Agreement Dated April 23, 1991; CAROL ANN CARLETON, Trustee Of The Carol A.  
3 Carlton Trust Agreement Dated May 2, 1991; FILOMENA R. BUCKINGHAM, Trustee Of The  
4 Filomena R. Buckingham Trust Agreement Dated MAY 2, 1991; AMELIA M. LUCAS, Trustee  
5 Of The Filomena R. Buckingham Trust Agreement Dated May 2, 1991; FILOMENA R.  
6 BUCKINGHAM, Trustee Of The Amelia M. Lucas Trust Agreement Dated May 2, 1991;  
7 AMELIA M. LUCAS, Trustee Of The Amelia M. Lucas Trust Agreement Dated May 2, 1991;  
8 LARRY M. LUCAS, Trustee Of The Lucas Family Trust U/D/T Dated January 22, 1991; and  
9 AMELIA M. LUCAS, Trustee Of The Lucas Family Trust U/D/T Dated January 11, 1991, and,  
10 answering solely on behalf of themselves, and severing themselves from their Co-  
11 Defendants, and in answer to Plaintiffs' Complaint on file herein, admit, deny, and allege  
12 as follows:

## **ANSWER TO COMPLAINT**

14           1. Answering the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 13, 14, 15, 17,  
15 18, 20, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46,  
16 47, 49, 50, 51, and 52 of the Complaint, these answering Defendants deny each and every  
17 allegation contained in said paragraphs.

18       2. Answering the allegations of Paragraph 8, these answering Defendants lack  
19 sufficient information or belief to admit or deny the allegations of said paragraph and,  
20 basing their denial upon said lack of information and belief, deny generally and  
21 specifically each and every allegation contained in said paragraph.

22       3. Answering the allegations of Paragraphs 10, 11, 12, and 23, these answering  
23 Defendants are informed and believe that the allegations stated therein are inaccurate and,  
24 basing their denials upon said information and belief, deny generally and specifically each  
25 and every allegation contained in said paragraphs.

26       4. Answering the allegations of Paragraphs 16, 33, 40, and 48, these answering  
27 Defendants incorporate their previous denials and other responses to the paragraphs  
28 referenced therein as if each was set forth herein again *in haec verba*.

1       5. Answering the allegations of Paragraph 19 of the Complaint, these  
2 answering Defendants admit that the term “readily achievable” is defined as “easily  
3 accomplishable and able to be carried out without much difficulty or expense.” Except as  
4 expressly admitted herein, these answering Defendants deny each and every remaining  
5 allegation contained in said paragraph.

6       6. Answering the allegations of Paragraph 21 of the Complaint, these  
7 answering Defendants admit that Kohler alleges removal of purported architectural  
8 barriers is readily achievable, but not that this is indeed the case. Except as expressly  
9 admitted herein, these answering Defendants deny each and every remaining allegation  
10 contained in said paragraph.

## **AFFIRMATIVE DEFENSES**

## **FIRST AFFIRMATIVE DEFENSE**

13       7. As and for a first affirmative defense, these answering Defendants allege, on  
14 information and belief, that Plaintiff is pursuing the within action in bad faith, and without  
15 giving these answering Defendants any opportunity to address or correct the purported  
16 violations upon which Plaintiff's action is based.

## **SECOND AFFIRMATIVE DEFENSE**

18       8. As and for a second affirmative defense, these answering Defendants allege  
19 that Plaintiff was negligent in and about the events underlying his Complaint and that,  
20 under the Doctrine of Comparative Negligence, Plaintiff is barred, or proportionally  
21 foreclosed, from any recovery.

### **THIRD AFFIRMATIVE DEFENSE**

23       9. As and for a third affirmative defense, these answering Defendants allege  
24 that Plaintiff is barred from recovery herein under the Doctrine of Unclean Hands.

#### **FOURTH AFFIRMATIVE DEFENSE**

26       10. As and for a fourth affirmative defense, these answering Defendants allege  
27 that the purported statutory authority under which Plaintiff premises liability is  
28 inapplicable to the within matter.

**FIFTH AFFIRMATIVE DEFENSE**

11. As and for a fifth affirmative defense, these answering Defendants allege  
 12 that all applicable governmental authorities approved the subject construction and granted  
 13 appropriate certificates of completion, and that Defendants' reliance thereon bars Plaintiff  
 14 from any recovery herein.

**SIXTH AFFIRMATIVE DEFENSE**

12. As and for a sixth affirmative defense, these answering Defendants allege  
 13 that Plaintiff impliedly waived the claims upon which he sues herein.

**SEVENTH AFFIRMATIVE DEFENSE**

13. As and for a seventh affirmative defense, these answering Defendants allege  
 14 that Plaintiff and/or his counsel is/are vexatious litigant(s) and that, as a condition  
 15 precedent to going forward with the within action, said parties must post security to the  
 credit of these answering Defendants and that, until such security is posted, the instant  
 matter shall be stayed and that, if such security is not posted, the instant matter shall be  
 dismissed with prejudice.

**EIGHTH AFFIRMATIVE DEFENSE**

14. As and for an eighth affirmative defense, these answering Defendants allege  
 15 that modification of existing facilities is technically infeasible, prohibitively expensive,  
 16 and/or impossible.

**NINTH AFFIRMATIVE DEFENSE**

15. As and for a ninth affirmative defense, these answering Defendants allege  
 16 that alterations to address the items alleged in Plaintiff's Complaint herein are, in whole or  
 17 in part, not readily achievable.

18. WHEREFORE, these Answering Defendants pray that:

21. 1. The within action be dismissed with prejudice and judgment be entered in  
 22 their favor;
23. 2. That Plaintiff take no relief from the within action;
24. 3. That Defendants receive their attorney's fees and litigation expenses;

1       4.     For costs of suit;

2       5.     That Plaintiff and his counsel be ordered to post security for Defendants'  
3 attorney's fees and costs, that the instant matter be stayed until such security is posted,  
4 and that it be dismissed if Plaintiff and/or his counsel decline to post such security; and

5       6.     For such other relief as the Court may deem just and proper.

6 Dated: March 25, 2008

VAUGHN & VAUGHN

7 By: /s/ Donald A. Vaughn

8 DONALD A. VAUGHN

9 Attorneys for Defendants VINCENT MANNO,  
10 Trustee Of The Vincent D. Manno Trust  
11 Agreement Dated April 23, 1991; CAROL ANN  
12 CARLETON, Trustee Of The Carol A. Carlton  
13 Trust Agreement Dated May 2, 1991;  
14 FILOMENA R. BUCKINGHAM, Trustee Of  
15 The Filomena R. Buckingham Trust Agreement  
16 Dated MAY 2, 1991; AMELIA M. LUCAS,  
17 Trustee Of The Filomena R. Buckingham Trust  
18 Agreement Dated May 2, 1991; FILOMENA R.  
19 BUCKINGHAM, Trustee Of The Amelia M.  
Lucas Trust Agreement Dated May 2, 1991;  
20 AMELIA M. LUCAS, Trustee Of The Amelia M.  
Lucas Trust Agreement Dated May 2, 1991;  
21 LARRY M. LUCAS, Trustee Of The Lucas  
22 Family Trust U/D/T Dated January 22, 1991; and  
23 AMELIA M. LUCAS, Trustee Of The Lucas  
24 Family Trust U/D/T Dated January 11, 1991

1           **Kohler v. Stonecrest Square Gas & Wash, Inc., et al.**

2           United States District Court Case No. 08cv0105 L NLS

3           **CERTIFICATE OF SERVICE VIA CM/ECF SYSTEM**

4           I hereby certify that on **March 25, 2008**, I electronically filed the document entitled:

5           **ANSWER TO COMPLAINT**

6           with the Clerk of the United States District Court for the Southern District of California, using the  
 7           CM/ECF System. The Court's CM/ECF system will send an e-mail notification of the foregoing  
 8           filing to the following parties and counsel of record who are registered with the Court's CM/ECF  
 9           System:

10           Lynn Hubbard, III, Esq.  
 11           Scottlynn J. Hubbard, IV, Esq.  
 12           DISABLED ADVOCACY GROUP, APLC  
 13           12 Williamsburg Lane  
 14           Chico, CA 95926  
 15           Tel: (530) 895-3252 / Fax: (530) 894-8244  
 16           E-mail: [usdcso@hubslaw.com](mailto:usdcso@hubslaw.com)

17           Counsel for Plaintiff CHRIS  
 18           KOHLER

19           Robert W. Zickert, Esq.  
 20           LAW OFFICE OF ROBERT W. ZICKERT  
 21           444 West C Street, Suite 200  
 22           San Diego, California 92101  
 23           Tel: (619) 685- 6888 / Fax: (619) 544-1961  
 24           E-mail: RZickert@aol.com

25           Counsel for Defendants  
 26           STONECREST GAS & WASH,  
 27           INC., dba STONECREST SHELL  
 28           and STONECREST PLAZA, LLC

17           Pursuant to the CM/ECF system, registration as a CM/ECF user constitutes consent to  
 18           electronic service through the Court's transmission facilities.

19           I declare under penalty of perjury of the laws of the United States of America that the  
 20           foregoing is true and correct, and that I executed this Certificate of Service on **March 25, 2008**, at  
 21           San Diego, California.



22           LINNE J. BURKS

23  
24  
25  
26  
27  
28